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MEMORIAL, &c.

OF

THE VIRGINIA YAZOO COMPANY,

TO THE

CONGRESS

OF THE

United States.

Washington:

PRINTED BY WILLIAM DUANE & SON.

1803.

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TO THE HONORABLE

THE

SENATE AND HOUSE OF REPRESENTATIVES

OF THE

United States.

THE memorial of the Virginia Yazoo Company,

HUMBLY SHEWETH—

THAT in the year 1788, the state of Georgia offered a cession of part of its western territory to the United States, obviously to discharge the debt incurred by them in defence of that country against the Indians, which was, by the United States (as was presumed) deemed not advantageous.

In July of 1788, the United States proposed to receive a cession of all the territorial claim of Georgia west of the Apalachicola, &c. containing, as is believed, about forty millions of acres, at the price of 171 428 57/70 dollars, a small portion only considered as specie, the balance certificates.

These transactions were in truth the principal inducement which led the Virginia Company to make propositions to the legislature of Georgia at the session of 1789; not as a subject of speculation, no such thing was ever intended or attempted, but sincerely designing a settlement in that country, with sober and industrious citizens, whenever leave to effect that purpose might have been regularly obtained of the general government, and to have been accompanied by civil and military officers appointed according to law.

The Company deputed two of their members to wait on the legislature and present their petition, and thereby proposing for the tract of country included within the following boundary, "beginning at the mouth of Bear Creek, on the south side of the Tennessee river, running thence up the said Creek to the head or source, thence a due west course, supposed to be twenty miles, to the Tombigby or twenty mile Creek, thence down the same to latitude thirty three, thence along the said latitude a due west course to the Mississippi, thence up the said river to the northern boundary line of this state, thence along the said line a due east course to the Tennessee river, thence up the said river to the beginning. "To give sixty thousand dollars, payable in the currency of the state or any liquidated debts against the state."

See petitionauthenticated.

Among other proceedings had upon the petition, the senate ordered a committee to confer with the memorialists on the subject of the bill and petition. The house of representatives made the same order, and that the committee consist of a member from each

See proceedings authenticated.

county. In the various conferences there did not appear even a wish by any member of the committees, to change the mode of payment proposed.

In due time the bill predicated upon the petition stated, passed into an act, which granted to the Virginia Yazoo Company, pre-emption of the land stated in their memorial, and designated by the same lines of boundary for the amount of 93,741 dollars; and if payment made within two years to the treasurer, his receipt authorised the governor to sign and deliver a grant to the company.

See the act granting 7,000,000 acres, more or less, and state seal annexed.

In a short time after the passing the act, two small payments at different periods, were made to the treasurer, in the paper currency of the state, in part payment of the purchase.

See his receipts authenticated

Within the two years, the whole amount due, was at the treasury office tendered to the treasurer, and receipt demanded to entitle to a grant. Tender refused, without assigning any reason therefor. The tender was in the liquidated papers and debts of the state acknowleged such, and to be genuine, which receipt is as follows:

Acknowlegement of the Treasurer of Georgia, of the tender made, of payment, by the Virginia Yazoo Company.

STATE OF GEORGIA.

I, John Meals, treasurer of the said state, do hereby acknowlege and certify, that on the 12th day of December, in the year 1791, personally appeared before me at the treasury

office, John Watts, esquire, a member of the Virginia Yazoo Company, invested with full powers by the said company, to pay into the treasury of the state, the balance still due of the consideration and price of a certain tract of country, contracted for and purchased by the said company, from the legislature of this state, agreeable to an act for disposing of certain vacant lands or territory within this state; and the said John Watts, did accordingly in the presence of George Handley, Benjamin Porter, and Anderson Watkins, produce, count out, and tender to me, as treasurer of the said state, in behalf of the said Virginia Yazoo Company, certificates and orders on the treasury for claims liquidated and signed by persons legally authorized to issue the same for debts due and owing from this state, amounting to the sum of £21,519 11 4 sterling, which is equal to the amount of 92,226 dollars, and $\frac{40}{90}$ths of a dollar, which sum, together with the payments heretofore made, and received into the treasury in part payment of the lands aforesaid, amounts to the sum of 93,741 dollars, the price stipulated for the said tract of country in the act of assembly before mentioned. And the said Jno. Watts, Esquire, did accordingly demand of me, in the name, and in behalf of the said company, to receive the certificates and orders on the treasury now tendered, and to certify the receipt of the same as treasurer of this state, to entitle the said company to a grant of the lands aforesaid, in consequence of their stipulations with the legislature, and the act of assembly before cited; which sum of £ 21,519 11 4 sterling, equal to the amount of 92,226 dolls. and $\frac{40}{90}$ths of a dollar, in the aforesaid liquidated debts, now tendered to

me, I did refuse to receive and certify as a payment for the balance due by the said company for the lands aforesaid.

Given under my hand, as treasurer of the said state, at my office, in the town of Augusta, on the date first above mentioned.

JOHN MEALS, *Treasurer.*

Witness,

GEORGE HANDLEY,
B. PORTER,
ANDERSON WATKINS.

(Annexed to the preceding.)

GEORGIA.

By his excellency, Governor Telfair, governor and commander in chief, in and over the state aforesaid.

To all to whom these presents shall come, GREETING:

KNOW YE, That John Meals, Esq. is treasurer of the state of Georgia, and that Thomas Watkins, Esq. is secretary of the honorable the senate of the said state. Therefore, all due faith, credit, and authority, are, and ought to be had and given to the annexed documents by them respectively subscribed.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said state to be affixed, at the state house in Au-

gusta, this 24th day of December, 1791, and in the sixteenth year of the independence of the United States of America.

(SEAL.) EDWD. TELFAIR.

By his Excellency's command,

(Signed) JOHN MILTON, *Sec'ry.*

Proof is now adduced to shew, that through every stage of the business, and particularly at the time the bill passed into an act, and after it became a law, not only specie was not contemplated by the legislature, but that it was their professed intent by that law, to meet the mode of payment proposed by the petition of the Virginia Company; and this arrises from,

1st. The petition contemplated and proposed such mode of payment only.

2d. The conferences of committees appointed for that purpose with the agents of the company, and no shadow of alteration from the mode of payment proposed by the petition, even wished by any of the gentlemen forming the committees.

3d. The act itself recognising the petition or memorial, thereby ingrafting it as part.

See protest authenticated.

4th. The protest of the minority after the passage of the bill, grounded upon the precise mode of payment stated in the memorial of the Virginia Company. This protest recognised by deposition of Seaborn Jones, and of Joseph Habersham, two of that minority, and by the deposition of the printer.

5th. The testimony of five gentlemen of the majority of that legislature, to wit:

STATE OF GEORGIA,

Green County.

I do hereby certify, that I was a member of the house of representatives of the general assembly of this state in the year 1789, when and at which session a part of the western territory of this state was sold to a company of persons stiled and called the Virginia Yazoo Company. As well as I recollect, I voted in favour of the sale, and did myself fully understand at that time, that the said Virginia Yazoo Company by the terms of the contract made, had of right the privilege to pay for the said territory so purchased of the general assembly, in the state certificates and orders on the treasury, for claims liquidated at their nominal or expressed amount or value, and I believe such was the general understanding, and received opinion of the general assembly, and how that omission happened in the law I do not know. Given under my hand, this 17th day of October, 1803.

(Signed) WM. FITZPATRICK.

TEST, F. JOHNSON.

STATE OF VIRGINIA.

Fluvanna County.

This day came Francis Johnson before me, one of the commonwealth's justices, in

and for said county, and made oath that Wm. Fitzpatrick esquire, signed and subscribed the within certificate in his presence. Given under my hand this 28th of November, 1803.

(Signed) JEDEDIAH JOHNSON.

I do hereby declare, that I was a member of the legislature of the state of Georgia in the year 1789, at the session of which a part of the vacant territory of said state was sold to a company stiled the Virginia Yazoo Company, in payment for which, it was understood as I then conceived and still think, the state was to receive its audited certificates and other liquidated claims of the same nature, under which impression I voted in favor of the said sale, believing it to be the interest of the state to redeem its papers, and at the same time doing justice to the individual holders of them, as early as possible.

(Signed) JOHN SHELMAN.

Louisville, 11*th November*, 1803.

(The same affidavit by Mr. Johnson.)

STATE OF GEORGIA.

November 14*th*, 1803.

I do hereby certify and declare that I was a member of the legislature of the state

aforesaid in the year 1789, at the session of which a part of the vacant territory of said state was sold to a company stiled the Virginia Yazoo Company, in payment for which it was understood as I then conceived, and still think, was to have been made either in the then paper medium in circulation, audited certificates or other liquated demands against the said state. Given under my hand the day and year as above.

(Signed) J. APPLING.

(The same affidavit by Mr. Johnson.)

GEORGIA.

Columbia County.

Personally appeared before me, Neil Cleveland, esq. and after being duly sworn on the Holy Gospels of God, saith, he was a member of the legislature of the aforesaid state in the year, 1789 and 1790, when a sale of the western part of the said state was made to the Virginia, South Carolina, Tennessee companies, and that this deponent voted in the affirmative on the passage of the law for the sale of the aforesaid land, and that his impressions at the time of the sale was, that the state securities or certifies were to be received in payment for the said lands.

(Signed) NEIL CLEVELAND.

Sworn to this, 14th November, 1803, before Peter Crawford, J. P. ex. offi.

STATE OF GEORGIA.

Hancock County, to wit:

I do hereby certify that I was a member of the Senate of the legislature of this state in the year 1789, at which session a part of the western territory of this state was sold to a company of persons stiled and called the Virginia Yazoo Company, and that I voted in favor and for the said sale. I further certify that specie was not during the progress of the transaction offered by the Virginia, asked by the legislature, or contemplated by either party. That the Virginia Yazoo Company, offered in payment for the said territory, the state certificates and orders on the treasury of the state for claims liquidated. And that no other kind of payments was by the legislature at that time expected as 'twas clearly so understood, and how the omission happened in the law I do not know.

IN WITNESS WHEREOF, I have hereunto set my hand and name, this 19th October, 1803.

(Signed) JAMES EVANS.

STATE OF GEORGIA.

Hancock County, sc.

This day major James Evans of the county aforesaid, who has subscribed the above certificate, came before me, one of the com-

monwealth justices of the peace in and for the said county and made oath to the truth of the foregoing certificate in due form.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 19th of October, 1803.

(Signed) B. SHIVERS, J. P. (L. S.)

GEORGIA.

Hancock County.

By Martin Martin, clerk of the superior court of said county.

To all to whom these presents may come, GREETING:

KNOW YE, That Barnaby Shivers, esquire, whose signature is affixed to the foregoing affidavit, is an acting justice of the peace for said county.

Therefore full faith credit and authority are justly due to his official attestation as such.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the county at office, this 19th, October, 1803.

(SEAL.)

(Signed) MARTIN MARTIN,

Clerk Superior Court.

See memorial authenticated and proceedings.

To which they add the testimony arising from the report of the committee of the senate, to whom was referred, (in consequence of refusal of tender by the treasurer, the payment offered by the Virginia Company) the petition of the company, and therein stating their original petition, mode of payment therein set forth and proposed, their compliance, bona fide, with every thing incumbent on them to perform, to render the contract on their part executed and complete, the refusal of tender by the treasurer, without assigning any reason therefor, and praying the legislature to give directions to their treasurer to receive, &c. and which is as follows :

" In senate, Dec. 17th, 1791. The committee to whom was referred the memorial of the Virginia Yazoo Company, report, that they have duly considered the same, and find it to contain a true statement of facts," therefore recommend the following resolution :

"*Resolved*, That the state treasurer be directed to receive in payment for the lands sold to the Virginia Yazoo Company, specie, paper medium, or any liquidated demands against this state, provided the payment be made at or before the 21st inst."

Although on the question, it passed in the negative, yeas 4, nays 5, yet the testimony arising from the report of a committee in every respect competent to such investigation, and professedly appointed for such purpose, is respectable, and must have weight.

The amount of this solemn and concurrent testimony is believed competent fully to

evince, that the express intent of the legislature, by their act of 1789, was to stipulate the same mode of payment as the Virginia Company had proposed, and thereby meet the proposition contained in their memorial, which in the act they notice, and therein ingraft.—And it will be worthy of observation, that the testimony in general, applies to the act not only when in the character of a bill susceptible of modification, but at the time of passing, and when passed into a solemn legislative act.

The conclusion, (it is presumed) must necessarily be, that the Virgiana Yazoo Company having performed every thing incumbent upon them to render the contract executed and complete, they were entitled to their grant for the specific territory purchased.

Some of the gentlemen of the majority, it is true, have not sworn to their signed declaration, and the company had not the means, by process, to compel; but surely what they have declared and signed may be fairly presumed to be truth, especially when corroborated by others who have made oath. Their signed declarations are proved to be genuine by the deposition of Francis Johnson, who subscribed as a witness, and although informal is believed to be sufficiently luminous to make efficient impression.

STATE OF VIRGINIA,

Fluvanna County, ss.

THIS day, Francis Johnson came before me, Jedediah Johnson, one of the common-

wealths justices in and for the said county, and made oath, that in the month of September last, he was employed by David Ross, Esq. on the part of the Yazoo Company, to repair to the state of Georgia, and there to make application to such of the gentlemen who composed the legislature of that state in the year 1789, as voted in the affirmative of the contract made with the said company during that session for part of the vacant territory belonging to the said state, as could with convenience at this period be met with for affidavits and certificates, to prove the nature and understanding of the contract as to what was to be received in payment by the state for the territory then contracted for. That in the progress of this business, he applied severally to Mr. Middleton Woods, of Elbert county, col. Harman Reynolds, of Clarke county, and Mr. Archer Gresham, of Green county, who were members of that legislature, and voted in the affirmative of that sale as they told him, for affidavits or certificates comprizing their belief on understanding of what kind of payments the real contract embraced, whether gold or silver, paper medium, funded or liquidated claims, or what? That they severally refused to give any affidavit or certificate upon the subject: that he also applied to maj. David Gresham, of Green county, one of the senate that year, and who also voted in the affirmative of the said sale; that major Gresham informed him his recollection was clear that the Virginia Company had, agreeably to his idea and understanding of the contract of right, the privilege to pay for the territory so sold and purchased, in the paper medium of the state, certificates and orders on the treasury for claims liquidated against the state,

but being in the legislature of that state in the year 1795, when the lands were again sold by the legislature, he would not grant an affidavit or certificate unless the Virginia Company would promise not to use it to the prejudice of the purchasers of 1795, and if they would make that assurance, he would make an affidavit comprehending his belief and understanding of the contract.

That of those who voted in the affirmative of the said contract, from the best information he received, there are dead, Messrs. Bisset and Osborne, of the senate, Messrs. Little, Love, and Weed, and by some informed that Mr. Watts was also dead, and by others that he removed to the western country—removed and absent from the state, Messrs. Few, M'Intosh, Fletcher, and Williamson, and to Messrs. Kerr, Mackintosh, and Oneal he did not apply.

This deponent further states, that he was instructed to apply and get copies and extracts from the minutes or journals of senate and house of representatives of Georgia, of certain resolves, &c. which were denied him, and for further and more full information upon that point, he refers to copies of his memorandums, and letters of the 23d October last, and 9th November, hereto subjoined to the secretary of the senate and house of representatives, as also their answers thereto of the 9th instant, also annexed—he further states, that after those communications had passed the said secretary and clerk, jointly made application to the house of representatives, by maj. Charlton, a member of that house, for instructions how to act, (the memorandum and communi-

cations accompanying the application) which were ordered to lie on the table—this information he received from the said secretary and clerk.

(Signed) FR. JOHNSON.

Subscribed and sworn to before me, this 28th November, 1803. Given under my hand as a justice of the peace, in and for the county first above mentioned.

(Signed) JEDEDIAH JOHNSON.

To such depositions as there are, the seal of the state authenticating is wanted. This is admitted, and here again there were no means to compel that justice to be done the Virginia company which was their due. Application was made to the secretary of state to authenticate with the seal of the state, it was refused unless the governor would specially direct it. His excellency was applied to and refused to direct or permit it to be done, as appears from the deposition of George Holman, which is as follows :

STATE OF GEORGIA.

City of Augusta.

Before me, John Wilson, one of the justices of the inferior court of the county of Richmond and state aforesaid, and intendant of the city of Augusta in the said county and state, personally came and appeared, George Holman, at present of the said place, and being duly sworn, made oath : That on Wednesday the 8th instant, he applied in Louisville, the

seat of government, to Horatio Marbury, Esq. the secretary of state for the said state of Georgia, and requested the said secretary to procure the governor's testimonial and seal of the state, to authenticate more fully, that William Robertson, Esq. is secretary of the senate, and that Hines Holt, Esq. is clerk of the house of representatives of the state of Georgia, aad also, that John Wilson, esquire, is one of the justices of the inferior court of the county of Richmond in the said state—the names of which William Robertson and Hines Holt, are to certain extracts from the journals of the general assembly of the said state for the year one thousand seven hundred and eighty-nine and and one thousand seven hundred and ninety-one, hereunto annexed, and the name of the said John Wilson to a certain affidavit made before him by one Seaborn Jones, Esq. of the city aforesaid, also hereunto annexed, but was answered and told by the said secretary of state that it could not be done unless his excellency the governor would pass an executive order for that purpose. That, in consequence thereof (his excellency Governor Milledge being at his seat near Augusta) he, this deponent, on the 10th instant, waited in person on his excellency governor Milledge, and after explaining to him the nature of the application made on Wednesday last to the secretary of state, and the reference to the governor, his excellency refused to order or permit the said testimonial to be given. And this deponent doth further say, that he was two weeks or upwards in Louisville aforesaid during the late session of the general assembly of this state, and is personally acquainted with William Robinson and Hines Holt, before mentioned,

and doth know that they severally acted, the former as secretary of the senate, and the latter as clerk of the house of representatives, and doth verily believe that they have been duly and regularly appointed as such. And he doth further say that he was present when the extracts hereunto annexed were taken from the journals, which he particularly examined, and verily believes they were correctly extracted.

(Signed) GEORGE HOLMAN.

Sworn to before me, December 13, 1802.

(Signed) JOHN WILSON, I. P.

Other testimony was expected to appear from the journals of the senate and of the house of representatives of Georgia, application was regularly made to the proper officers at their respective offices, and copies of such extracts as were required were refused by them to be given or made, not feeling themselves at liberty to certify any thing (as they were pleased to say) relative to Yazoo, as by their joint letter to and deposition of Francis Johnson will appear, which letters are as follows :

Louisville, November 9th, 1803.

SIR,

The extracts required by my communication of the 23d ultimo, it is indispensably requisite that they should be at this time.— They are conceived by the Virginia Yazoo company to be all important, and I trust you

have had sufficient time and opportunity to make them out. I have been detained already much longer than I could have expected and much to the injury of my business. I trust therefore any longer delay will not be contemplated or permitted. The copies before pointed out were, I believe, first a copy of the resolution of the senate in the year 1790, declaratory of their understanding of the contract made with the Virginia Yazoo Company in the year 1789, by the legislature of this state for a part of their vacant or western territory, as it respects the mode or subjects of the payments to be made by the said company for the said territory.

Secondly, A copy of the resolution of the senate for repaying to the Virginia Yazoo Company, the money by them paid into treasury of this state in the year 1790, in part performance of their contract for the said territory; this resolution if such there be, probably passed in the year 1794 or 1795.

Thirdly, Whether any other, save the first petition, was presented by the Virginia Yazoo Company to the session or assembly of 1789, concerning or in any wise touching the subject of the western or vacant territory of this state, upon this point I wished a certificate.

Hoping and intreating you not longer to detain me, I remain with the highest esteem, &c.

(Signed) F. JOHNSON.

To the Secretary of the Senate.

An exact copy of the above last mentioned letter was made by Mr. Johnson and directed "*To the clerk of the house of representatives.*"

Their joint answer is as follows :

Louisville, 9th Nov. 1803.

SIR,

YOUR communication of the 23d ult. and letter of this day we have before us, and notice the contents.

After obtaining advice on the subject, WE, from the diversity of opinion do not feel at liberty to certify any thing relative to Yazoo ! ! !

As the state of Georgia has disposed of the territory in question to the union, it is thought adviseable in her officers to embarrass the general government as little as possible on that subject.

The state of Georgia, we have reason to believe, will withhold nothing which will tend to the furtherance of any object the United States may have in view.

The legislature is now in session, and should you be dissatisfied with our proceedings, we advise you to apply to them, and in every instance we shall feel ourselves bound by their decision.

We are with respect and consideration,

Sir,

Your obedient servants,

(Signed,) WILL. ROBERTSON,
Secretary to the Senate,

HINES HOLT,
Clerk House Rep.

FRANK JOHNSON, Esq.

It was stated by the commissioners in their report to congress last session, that the Virginia Company withdrew the money from the treasury, which they had paid in part of the purchase made.

There is no doubt but the honorable gentlemen had, what they presumed ground for such statement, but in truth, the fact is not so. Facts stated will illustrate and evince.

After the tender and refusal as stated, the Virginia Company hoping from time to time, the honorable the legislature of Georgia, would do them that justice they felt themselves enti. tled to, at their session of 1795, deputed John B. Scott to make application to that legislature, for a fulfilment of the contract stated, and if necessary to make some sacrifices to the state in order to obtain the grant in an amicable manner, without delay or disputes, he was instructed so to do, but he had no authority to do any act which ought to impair, or in any manner affect the original contract: he found the legislature not in a temper to accept his propositions of accommodation for the former sale, as they were deeply engaged in selling the same lands with additional tracts to a sett of new purchasers. The object of Mr. Scott's mission being thus unatainable, he had no further powers to act for the company; and it is here to be observed, that upon his return from Georgia, at the first meeting of the company, he informed them that he had inconsiderately accepted of the money which had been paid into the treasury, in part of the price of the land, which he was willing to pay to them; this information was received with astonishment, and immediately there was an unani-

mous protest against this transaction, which is as follows :

" That he (John B. Scott) having inadvertently accepted of the said money from the treasurer, and was ready to deliver it unto them ; but, they unanimously refused to accept of it, and in the most express terms deny, that they either gave any orders for withdrawing the money, or had any such intention. And they not only disavow the right of receiving the said money, but they declare it is, and ever has been, their uniform intention, to pay up the balance, whenever the government of Georgia shall perform their part of the contract, and permit a grant to issue, agreeable to the original purchase."

The Virginia Company determined as far as they could to understand the transaction (though they know it could not affect their title) deputed a messenger to obtain copies of such documents as they supposed would be illustrative of it, that is to say, copy of the resolution of the legislature if such there was directing the treasurer to re-pay, and which, (if such there be) was by the proper officers refused to be given.

From the treasurer was required, copy of receipt (if such there was) given by John B. Scott, for money said to be received by him, as agent of the Virginia Yazoo Company, perhaps in 1795, and paid into the treasury by the said company, in the year 1790, in part payment of their purchase, and any order of authority by which the said John B. Scott withdrew that money, if any such authority is filed. To which the treasurer returned the following answer :

TREASURY OFFICE, GEORGIA.

Louisville, November 9th, 1803.

SIR,

I HAVE searched this office, and have not been able to find either of, or any such papers, mentioned in the above letter.

I am, Sir,

Your most obedient,

(Signed) EDWIN MOUNGER.

Mr. Francis Johnson.

It is understood to be insinuated, that the Virginia Company are indirectly concerned in the purchases said to be made from the legislature of Georgia in 1795, and perhaps accompanied with a wish, that belief should be attached thereto. The Virginia Company professing themselves at all times to have been governed by the strictest principles of honor and probity, to wipe off, as far as depends upon themselves individually, the insinuation as dishonorable as it is unjust, have made their solemn appeal to the searcher of hearts, that they never were nor are either as a company, nor individually, nor in any other way or manner, originally or as assignees, directly or indirectly concerned in the purchases said to be made in 1795. It is true, that it appears that John B. Scott, one of the members of the Virginia Yazoo Company, has taken part in those purchases, and until the

late report of the commissioners upon the business and transactions of the session of the Georgia legislature in 1795, in that work the Virginia Yazoo Company were absolutely ignorant of the relation in which he stood to the companies then formed, but whatever impropriety or blame may appear to arise from that transaction, it cannot with truth or justice apply to the Virginia Company as such, nor to individuals of that company, other than himself: except the present glance (the Virginia Company having done so from necessity) they do not wish further to interfere in the transactions of 1795, of the purchases then made, unless rendered necessary and urged thereto, in defence of their just right, but if so, they presume they are able to adduce such authority as to evince, that those presumed purchasers, and all having notice, claiming under them (and this will be shewn to be more extensive than at present probably presumed) in point of right and justice (notwithstanding their holding the evidence of legal grants) cannot have more than equal pretension with the Virginia Yazoo Company.

The only suggestion that has been at any time hinted against the absolute right of the Virginia Company, to their grant for the seven millions of acres of land more or less, that has appearance of difficulty even in a court of law is this, that the act itself not specially stipulating that liquidated papers of the state might be paid, the act is not susceptible of explanation any other way than from itself.

It is confidently believed that on this precise point, the law is otherwise, which governs the exposition of statutes by which any contract is formed.

The act of the legislature under which the Virginia Company claim, has all the validity and force of a contract, and admits of similar construction.

In defining the meaning of those clauses which relate to payment, latitude of construction is admissable; they are ambiguous, not special. The memorial proposes a specific mode of payment: the act cannot be properly construed as an alteration thereof. The words of the law are, the amount of 93,000 dollars; but neither specie, paper money, or certificates are mentioned. How is the intention to be ascertained? It is necessary to recur to the proposition on which the act is founded. To it the preamble refers, and it must be considered as constituting in fact a part of the act, and as ingrafted therein. In any uncertainty of construction, whether from ambiguity, from a deficiency or profuseness of expression, by the act, reference must be had to the memorial for the due ascertainment of the meaning. This mode of reasoning, is presumed, to be correct, and it is deemed equally so to state that the testimony of the members of a legislature is admissable evidence in a court of equity, to explain any ambiguity in their legislative act; and to explain the intent where a contract is thereby formed, (when a municipal regulation it is admitted to be otherwise, because here a rule prescribed is given for action) because the legislature acts in its moral character, and is taken as a moral person.

A few adjudications (from amongst a variety) are extracted from Viners abridgment.

Viner's abridgement vol. 19, p. 516, case 80. Zouch's case.

Every thing which is within the *intent* of the makers of the act, though not within the letter, is as strongly within the act as that which is within the letter, and the intent also.

Ibid, c. 81. Eston, vs. Studd.

The words of statutes are not to be considered only, but rather the intent of the matter is to be weighed, for many times things which are within the words of statutes are not within the *purview* of them, which *extends no farther than the intent of the makers* which is the principal thing to be considered.

Note. Williams, vs Berkley.

The intent of the act is always to be regarded, and to such purpose only the words ought to be construed.

Case of College of physicians.

The *intent* ought to be found partly from the words, and partly from the mischief they *intend* to remedy.

Page 519, note. Per Eyre, chief justice.

Constructions are to be made of the whole act according to the intent of the makers, and so sometimes are to be expounded *against the letter to preserve the intent.*

Stradling, vs. Morgan.

The intent of the makers may be *collected from the cause* or necessity of making the act, or *by the words in other parts* of the act, or by *foreign circumstances.*

Case 82. Magdalen college.

In acts that are to be construed according to the intent and meaning of the makers of them, *the original intent* and meaning is to be observed.

To these may be added the reading and decision of Puffendorf and Vattel, on the exposition of legislative acts forming a contract with individual members of the society; and

distinguishing such from laws prescribing a rule of civil conduct.

The sovereign authority of a state may be contemplated in two distinct capacities; the one being the exercise of this authority in prescribing municipal regulations for the conduct of the citizens; the other in the capacity of an agent for the state, in matters of contract and negociation. The former comprehends all those acts of the legislature which operate over the whole community, and apply themselves universally to the transactions of the people. These are rules of civil conduct prescribed for the regulation of society; and, as applied to the conduct of men, dictate the rules of right and wrong. Acts of this description are properly laws; and as the circumstances of mankind in a state of society are liable to mutations, a change of these municipal precepts is thereby rendered necessary; from whence originates the authority of the legislature to alter, amend or repeal them, and substitute others in their place, as appearances may direct or policy dictate. This power is a necessary concomitant of the legislative authority; and, having its origin in justice, is a foundation principle in the social compact, and devolves, therefore, on succeeding legislatures by delegation; but this principle, so well founded and so necessary to be exercised in the case of laws, if applied to other acts of the government, would become the instrument of injustice and the agent of despotism. "Hence," says Puffendorf, "we "must take care to distinguish the other acts "of sovereigns from their laws, least any "should imagine that all their *just* donations, "alienations and compacts, may be retracted

" by themselves of their successors. For " upon these acts a right is obtained by other " men, which ought not to be taken from " them against their consent." As, in all forms of government, there must be a moral agency attached to the sovereign power, which shall hold the tenure of the public property, and represent the nation in matters of contract and negociation; it follows, that this agency, in respect to its contents, must be subject to the same rules of right and wrong, and under the control of the same principles of justice, which govern the transactions of private individuals.

The body politic or public agency of a state, then, with respect to its contracts, stands in the same relation to the persons with whom the contract is made, and subject to the same obligations, that individuals are in similar circumstances; and as the contract of an individual will bind his heirs, and all others claiming under him, so the contract of a corporation binds its members in eternal succession, to which the moral agency of a state bears a just and definable analogy.

The moral agency of the state of Georgia, from the powers and qualities adherent thereto, might have made to the Virginia Company a sale of any portion of her unappropriated territory, without any exercise whatever of the legislative authority for that purpose, if the existing laws at that time had provided for such a measure. But, as such provisions had not been made, it became necessary to enact a law, directing the state agency in the case contemplated. In this case, therefore, the sovereign legislative power and

the incidental power of selling were exercised in co-operation ; and before the moral agency of the state could effect the contract, an act of legislation was necessary to prescribe the rules by which the transaction should be governed. Accordingly an act was passed. After the passage of this act, which operated as an express declaration of what the state agency willed to be done, as well as a legislative direction, as to the manner of executing that will, the governor, under the direction of this law, and in observance to that will, was, certain stipulations being complied with by the company, to carry the latter into effect, in compliance with and according to the provisions of the former.

In this transaction may be discerned the exercise of the sovereign will in two distinct capacities : the first, as a legislature prescribing rules ; the second, as a moral person disposing of a part of its property according to these rules. After the passing of this law, it became legal to sell in *this* method. It was an act of the body politic, authorised and sanctioned by law. And, as this contract was not dissolved by any failure of the company, in the performance of the *actual* conditions *contemplated*, but carried, so far as the same was practicable, under the subsequent irregularities of the opposite contracting party, virtually into effect, it ought to be viewed, (to the extent at least dependant on the act of the company) as equitably standing on similar grounds, not with contracts imperfect or executory ; but of contracts already in a state of execution. It could not, therefore, be affected by any thing ex post facto, nor its obliga-

tion impaired by any subsequent legislative act or disposition.

In the formation of the contract under consideration, the legislature of the state of Georgia acted not by any intermediate commisson, but directly in its capacity as a moral agent. The formalities customary in engagements between man and man, must, of course, be dispensed with. These, from the mode adopted by the sovereign will for employing this agency, and the nature of the agent itself, could not, in the usual mode of acting, appertain. It becomes of course necessary, and is admissable, to give to the whole transaction some liberality of construction, to fill up what may justly be considered tacit, without violating the evident meaning contemplated ; to add what, by undoubted testimony, may be evinced was in actual intendment by the parties. In support of this general principle, authorities may be adduced, tending to establish that the contract, as understood, at the period of formation, is that which at all subsequent periods ought to be acknowledged.

(Vattel, Lib. 2, sec. 268) " The interpretation of every treaty and every act ought to be made according to certain rules proper to determine the sense of them, such as the parties concerned must naturally have understood, when the act was prepared and accepted. The question, in the interpretation of a treaty or any act whatsoever, is to know what the contracting powers have agreed upon, in order to determine precisely, on any particular occasion, what has been promised and accepted . that is to say, not only what one of the parties has had the intention to promise,

but also what the other has reasonably and sincerely thought to be promised; what has been sufficiently declared to him, and upon which he must have regulated his acceptance."

"If the sense in any place of a discourse," says Puffendorf, "be expressed clearly and plainly, the doubtful or obscure phrases are to be interpreted by those plain and familiar ones."

"The interpretation ought to be made in such a manner, that all the parts appear consonant to each other; that what follows agrees with what went before." (Vatt. L. 2, sec. 285.)

And here, not irrevelantly, may be superadded, (as might many others of the preceding character in illustration,) the following maxim of Vattel; that neither the one nor other contracting or interested powers or parties, has a right to interpret the act at his pleasure. For if you are at liberty to give my promise whatever sense you please, you will have the power of obliging me to do whatever you have a mind, contrary to my intention, and beyond my real engagement; and reciprocally, &c." (Lib. 2. sec. 265.)

The preceding authorities would evince, that in the interpretation of contracts and of all acts whatsoever, what, by the intention of the parties may be presumed to be contemplated or to have been contemplated, at the period of contract or engagement; or what, by the general tenor of the act, and of explanatory concurrencies, can reasonably be assumed as a fundamental basis, shall, in defiance of any

casual modification of term, deficiency of expression or ambiguity, by equitable construction be adopted as the tenor of engagement by the parties.

Adjudications in courts of equity for specific performance of contract, have their general principles so firmly established, that it is deemed superfluous to be quoting authorities. They are numerous and decisive—that a contract deliberately entered into, and bona fide complied with on one side, shall be *specifically* enforced; and that a claim in equity arising upon an antecedent purchase, is preserved against a subsequent purchaser with notice, and it is presumed would defeat such subsequent purchase also, if united with posterior legal title in a third person.

It is presumed, that in whatever point of view the claim of the Virginia company is placed, the result will be the same, that they did bona fide fulfil their contract and entitled themselves to the benefit of it; and they can suggest no reason why a specific performance on the part of the state was not complied with, after two payments in paper currency of the then circulation had been received by the treasurer and receipted for, and the balance due tendered, unless a resolution of the legislature of that state, passed the 11th of June, 1790, directing their treasurer to receive only gold and silver and paper medium, after a certain time in August following in payment, might have had influence thereupon.

It does not appear, as your memorialists have understood, that any provision has been made by the honorable the legislature of Georgia. for the redemption of the certificates ten-

dered as stated. Your memorialists had an opportunity of subscribing a great many of those papers, which have not only been at, but above par, but kept them together, expecting from time to time to pay them whenever the legislature of Georgia might think proper to direct their grant to issue, until such opportunity for subscription was lost, and at this day many of those certificates remain in the hands of individual members of the company.

It may be proper to state, that the Virginia Company directed suit to be instituted in the supreme court of the United States, and paid fees to counsel, but the same was suffered to be discontinued after the passing of the act of Georgia in 1796, rescinding that of 1795; and the amendment to the constitution as to the suability of states.

The resolution before your honorable house, contemplates that the late commissioners should proceed finally to adjust the various claims. Your memorialists feel themselves in an inexpressibly embarrassed situation. With the deepest veneration and respect for those most honorable characters, your memorialists must state the awkward situation in which they must be placed in exhibiting their claim before those who have already reported a decision, as well upon the claims derived under the act of 1789, as those of 1795. That the former have no equity, that the title of the latter cannot be supported, but that they recommend a resolution in favor of the latter, embracing nearly the whole of the reservation, and entirely excluding the former from any reasonable participation with them.

It is humbly submitted whether commissioners would proceed (unless specially authorised) but upon evidence competent in a court of law or equity, and whether from the nature of the equitable dispensation to be made amongst the claimants by this honorable house, inferior testimony carrying with it rational conviction to the mind will not be deemed competent.

Your memorialists state, that besides their loss of the *specific subject* which they humbly presume they have shewn themselves well entitled to, their expense, sacrifice made of property, immense fatigue, and personal hazard in exploring the country, loss by certificates, and expense in making arrangements for extinguishing Indian claims, has gone far in impairing the private fortune of individual members.

Your memorialists pray this honorable house will consider the subject matter of their memorial, and recognize their right to such reasonable participation with other claimants, either in the ratio that the quantity of land which your memorialists may have shewn themselves entitled to, bears to the whole quantity claimed, or such other mode of relief, and in such proportion with others, as the justice and equity of their case may entitle them to ; and your memorialists, as in duty bound, shall pray, &c.

WM. COWAN,

Agent on behalf of the Virginia Yazoo Company.

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